IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 17/04/2003

Coram

The Honourable Mr. Justice N.V. BALASUBRAMANIAN
and
The Honourable Mr. Justice T.V. MASILAMANI

A.S. No.391 of 1989
and
Cross Objection No.122 of 1996

A.Jagannathan Padayachi .. Appellant in AS 391/89
/Respondent in Cross Obj.
No.122/96
-Vs-

Arulmighu Swaminathaswamy
Devasthanam,
Swamimalai
rep. by its Executive Officer
Thiru A.Kumaraswamy .. Respondent in AS 391/89
/Cross Objector in Cross
Obj. No.122/96

Appeal Suit and Cross Objection against the judgment and decree made in O.S. No.76 of 1985 dated 23.1.1989 on the file of the Subordinate Judge, Kumbakonam.

!For appellant in As,391/89 : Mr.P.Valliappan
For Mr.M.S.Krishnan & Respondent in Cross Obj.

^For Respondent in As.391/89 : Mr.Srinath Sridevan
& Cross Objector in Cross
Objection.

:JUDGMENT

T.V. MASILAMANI, J.

The defendant is the appellant in this appeal. The respondent filed the suit for damages for use and occupation to the tune of Rs.1,31,9 75/- and after deducting Rs.14,275/- towards compensation for 571 coconut trees at Rs.25/- per tree payable to the appellant, he has made claim of Rs.1,17,700/-.

The appellant resisted the claim of the respondent, that he is entitled to the benefit of tenancy laws and pleaded inter alia in his written statement that the claim made by the respondent by way of damages for use and occupation is not maintainable. The respondent has also come forward with cross objection in respect of the disallowed portion of the claim.

2. The facts that lead to the filing of this appeal may be briefly narrated hereunder:-
The suit property is a coconut grove measuring 6.01 acres in R.S. No.293/1 Thiruvalanchuli village, Kumbakonam Taluk, Thanjavur District belonging to the respondent-Devasthanam and by an agreement between the appellant and the respondent, the former agreed to raise 600 coconut trees in the suit land within 5 years and thereafter to hand over the same to the respondent for which he would be entitled to receive compensation for raising and rearing the coconut trees. The said period of 5 years was extended thrice, firstly from 1.7.1968 to 30.6.19 73, then from 30.6.1973 to 30.6.1976 and thereafter from 1.7.1976 to 30.6.1981 on the ground that the coconut trees were not ripe enough to yield nuts. In the meanwhile, the appellant has agreed to pay Rs.2 ,200/- per fasli for raising plantains as inter crop in the demised land. Similarly, he was permitted to enjoy 19 bamboo clusters and 4 mango trees also.

3. After expiry of the lease period ending on 30.6.1981, the respondent arranged to lease the usufructs of the coconut trees in public auction and thereupon the appellant filed a suit in O.S.No.650 of 1981 on the file of the District Munsif, Kumbakonam for an injunction restraining the respondent from interfering with his possession of the suit property. The said suit was dismissed and thereupon the appellant filed an appeal before the Subordinate Judge, Kumbakonam against the judgment and decree of the trial Court. In the appeal, it was held that the appellant was not a cultivating tenant. However, the first appellate court granted permanent injunction directing the respondent Devasthanam to file a suit for recovery of possession and to pay compensation to the appellant for rearing coconut trees. Against the said judgment and decree, the respondent filed a Second Appeal before this Court, whereas the appellant filed a cross appeal and the same are pending. The respondent valued the damages for unauthorised occupation by the appellant from faslis 1391 to 1394 as per the details given in the plaint thereby claiming totally a sum of Rs.1,31,975/-.

4. The appellant in his written statement stated that the claim made by the respondent is excessive for the reason that he agreed to pay Rs.2,200/- per fasli by way rent towards the enjoyment of the usufructs of the coconut trees, bamboo clusters and mango trees. He is a cultivating tenant entitled to the benefit under Tamil Nadu Act 57 of 1 961 and therefore, the respondent should file a fair rent petition for fixing appropriate rent. Since the respondent attempted to conduct lease auction of the usufructs of the trees in the suit land, the appellant filed the suit for injunction in O.S.No.650 of 1981 on the file of the District Munsif, Kumbakonam and the same was dismissed after trial. Hence, he filed an appeal against the said judgment and decree of the District Munsif, Kumbakonam in the appellate Court and the appeal was allowed granting a decree for injunction in favour of the appellant. The

respondent filed a Second Appeal before the High Court and the same is pending. The income from the suit property is only Rs.6,000/- and therefore, the claim by way of damages is excessive.

5. On the above pleadings, the trial Court framed the following issues:-

(1) Whether the plaintiff is entitled to the suit claim?
(2) Whether the defendant is not a cultivating tenant as stated by the plaintiff in para 7 of the plaint?
(3) Whether the claim for fasli 1391 is barred by limitation?
(4) Whether the plaintiff is entitled to claim damages against the defendant?
(5) Whether the plaintiff is entitled to adjust any amount without filing a suit for possession?
(6) Whether the claim made by the plaintiff is maintainable in law?
(7) What relief is the plaintiff entitled to?

6. After analysing the evidence, both oral and documentary, adduced on either side and the arguments advanced on behalf of both parties, the trial Court held that the appellant/defendant is not a cultivating tenant, that the claim for fasli 1391 was barred by limitation, that the respondent/plaintiff is entitled to only a sum of Rs.24,890/- by way of damages for unauthorised occupation of the suit property by the appellant/defendant and that the respondent/plaintiff is liable to pay Rs.28,550/- by way of compensation to the appellant/defendant for raising and rearing 571 coconut trees. Hence, the suit was decreed with proportionate costs.

7. The learned counsel for the appellant has argued at the outset that in view of the decision by the learned Subordinate Judge, Kumbakonam in A.S.No.38 of 1985 as against the decree and judgment in the said suit on the file of the District Munsif, Kumbakonam (vide) Exs.A-1 to A-3 and having regard to the fact that the appellant was recorded as cultivating tenant under the provisions of the Tamil Nadu Agricultural Lands Record of Tenancy Act 1969, he is entitled to the benefit under Section 51 of the Public Trusts (Regulation of Administration of Agricultural Lands) Act 1961 and that therefore the suit for damages is not maintainable. In this context, Exs.B-1 to B-3 certified copy of order of Sub collector, Kumbakonam and copy of cross objection filed by the appellant in S.A.No.669 of 1986 on the file of the High Court respectively have been relied upon by the appellant's counsel.

8. As against such contention, the learned counsel for the respondent has drawn our attention to the decision rendered in S.A.No.669 of 1 986 and Cross Objection No.11 of 1999 dated 10.1.2001 by this Court and reported in 2001-1-L.W.562 (ARULMIGU SWAMINATHASWAMY DEVASTHANAM, SWAMIMALAI v. A. JAGANNATHAN). The ratio laid therein may be extracted hereunder to appreciate the facts of the case:-

"When the initiation of the proceedings itself is not lawful and by virtue of Section 62 of the Tamil Nadu Public Trusts Act, when the Tamil Nadu Cultivating Tenants Protection Act stands repealed, so far as the trust properties are concerned, then no Revenue authorities can have any jurisdiction to entertain any application under the repealed Act. Hence, the Revenue authorities totally lack jurisdiction to entertain any application by the tenants under the Tamil Nadu Agricultural Lands Record of Tenancy Act. If that be so, Ex.A-13 being the proceedings without jurisdiction is null and void and as such, the same is vitiated for want of jurisdiction. Consequently, the same cannot be considered."
In these circumstances, the finding of the trial court in this respect has been upheld.

9. The admitted case of both parties is that the suit property is a coconut grove on ground and hence in view of the above decision between the same parties, we hold that the appellant herein is not a cultivating tenant entitled to claim the benefits of a cultivating tenant in view of Sections 51(iv) and 62 of the Tamil Nadu Public Trusts (Regulation of Administration of Agricultural Lands) Act 1961 (Tamil Nadu Act 57 of 1961) for the reason of the specific provision under Section 62 of the said Act which exempts the properties of public Trusts such as the respondent-Devasthanam from the purview of Tamil Nadu Act 25 of 1955. It follows necessarily that the appellant is not entitled to the benefit of Tamil Nadu Cultivating Tenants Protection Act, 1955 (Tamil Nadu Act 25 of 1955). Though an attempt has been made on the part of the appellant to show that a petition for Special Leave has been filed before the Supreme Court of India as against the said decision, it is agreed by the counsel for both sides that the said petition, SLP(C) No.4704 of 2001, was dismissed on 23.7.2001. Hence, the decision that the appellant is not a cultivating tenant of the suit property has become final.

10. It is common ground that even though claim has been made in the plaint for faslis 1391 to 1394, the claim for fasli 1391 is barred by limitation for the simple reason that the plaint has not been presented in the Court on or before 1.7.1985, inasmuch as the claim ought to have been made within three years from 1.7.1982, but filed only on 4.7.1985. Hence, the finding of the learned Subordinate Judge that the suit is barred by limitation in respect of fasli 1391 is sustainable.

11. Regarding the claim in the plaint, Ex.A-10 Entries at pages 37 and 38 of the Auction Register maintained by the respondent for faslis 1395 to 1397 has been relied upon and in this context, it is pointed out by the learned counsel for the respondent that the Subordinate Judge committed an error in calculating the amount on the basis of such entries under Ex.A-10. P.W.1 Baskaran, Clerk under the respondent-Devasthanam, has stated categorically that during the relevant period, the right of enjoyment of usufructs of 30 coconut trees had been leased to the highest bidder (vide) Ex.A-10 for Rs.2,400/- per fasli and a reading of the judgment of the learned Subordinate Judge would disclose the patent error committed by him in the calculation of the lease amount as if the said sum was in respect of three faslis, but on the other hand, as stated above, the said sum was the lease amount payable for one fasli. Therefore, the lease amount per tree comes to

Rs.80/-. In the above circumstances, the learned counsel for the respondent would urge that the claim made by the respondent in the plaint at the rate of Rs.75/- per tree is reasonable.

12. The learned counsel for the appellant would urge in this context that all the 571 coconut trees would not have yielded in one and the same fasli and that therefore, the claim of the respondent in the plaint is not only excessive, but appears to be improbable. In this respect, the appellant himself has admitted in the earlier plaint in O.S.No.650 of 1981 in paragraph 3 (vide) Ex.A-1 that as per the terms of lease, he has to raise and cultivate 600 coconut trees in the suit property at his cost and therefore, he planted coconut saplings in the suit property out of which 571 trees have grown up and 151 trees have begun to yield. Hence, the learned counsel for the respondent has argued, in our opinion, rightly that the learned Subordinate Judge was correct in holding that in fasli 1392, 250 trees were yielding, in fasli 1393, 350 trees were yielding and in fasli 1394, 571 trees were yielding. As stated above, the learned Subordinate Judge has fixed Rs.75/- per tree as damages for fasli for 1392 and as has been pointed out by the learned counsel for the respondent, the lease amount for the usufructs per tree comes to Rs.80/- as per Ex.A-10. Hence, the said amount of Rs.75/- per tree appears to be quite reasonable. Similarly, it is argued by the learned counsel for the respondent that there is no reason why the learned Subordinate Judge fixed Rs.40/- per tree for faslis 1393 and 1394 and having regard to the normal course of events and the evidence on record, we are of the opinion that the same amount of Rs.75/- per tree may be fixed for all the three faslis as damages for the enjoyment of the coconut trees.

13. It is admitted by both the parties that there are 19 bamboo clusters and 4 mango trees. The appellant had also raised plantains in the suit property. Similarly, it is not disputed that the appellant was in exclusive possession and enjoyment of the demised property along with the said trees during the relevant period and therefore, it is urged on the part of the respondent that Rs.2,200/-per fasli by way of damages towards enjoyment of the bamboo clusters, mango trees and plantains is not reasonable. Even though the respondent made a claim at the rate of Rs.3,600/- for plantain trees and Rs.2,900/- for bamboo clusters and mango trees per fasli, the evidence on record discloses clearly that damages fixed by the trial Court at Rs.2,200/- per fasli on this account is very reasonable. Hence, the finding of the learned Subordinate Judge on this aspect has to be confirmed.

14. The next question for consideration is whether the appellant is entitled to claim any compensation in the suit towards the coconut trees raised by him in the suit land. In this connection, the evidence on record, as stated above, is to the effect that the appellant planted coconut saplings by virtue of an agreement with the respondent to the effect that he will be entitled to compensation for the same. The learned counsel for the appellant has referred to the pleadings in this case and also the evidence of P.W.1 and D.W.1 to show that while awarding compensation to the appellant, the quantum so arrived at has to be deducted from the amount of damages payable to the respondent. In this respect the trial Court has awarded compensation of Rs.28 ,550/- at the rate of Rs.50/- per coconut tree raised and reared by the

appellant. Though the learned counsel for the respondent would urge that the said amount is on the higher side, having regard to the earlier findings with reference to Ex.A-10 in respect of the yield per tree by way of lease amount, we agree with the contention of the learned counsel for the appellant that Rs.50/- per tree towards compensation for raising and rearing the same is quite reasonable. Though the appellant's counsel has pointed out paragraph 13 in the written statement wherein the appellant/defendant has pleaded that the value of coconut trees will be more than Rs.200/- per tree, the evidence of

both P.W.1 and D.W.1 and Ex.A-10 do not lend support to such contention. Hence, the amount of Rs.50/- fixed by the trial Court as compensation per tree is not excessive.

15. The next question that has been canvassed by the learned counsel for either side is whether the appellant is liable to pay court fee on the amount so awarded by way of compensation. In this context the learned counsel for the respondent has relied upon the decisions in SRI SAMBU FILMS v. VIJAYA PICTURES (1990 (2) M.L.J. 405) and LAKSHMANAN CHETTIAR v. RAMANATHAN CHETTIAR (AIR 1935 MADRAS 115) in support of his arguments, that even though the appellant has not specifically claimed the compensation amount in his written statement, the amount so awarded is liable for court fee. He has referred to Section 149 C.P.C. and argued that the High Court can direct the appellant to pay court fee at any stage. Though the learned counsel for the appellant has relied on FIRM M.M. TEXTILES v. FIRM RAGHURAM TEXTILES 1990 (2) M.L.J. 557 and UTHANDARAMA PILLAI v. ARUMUGHAM PILLAI (1986 L.W. 676) in support of his contention that the claim made by the appellant is only a counter claim as part of a transaction giving rise to the cause of action for the suit, the facts of the case and the evidence on record disclose undoubtedly that the claim made by the appellant in his written statement was on the basis of a separate agreement between the parties to the suit and not on the basis of the same cause of action. Therefore, we are unable to agree with the argument of the learned counsel for the appellant that the amount awarded by way of compensation is not liable for court fee. Hence, the ratio of the decisions cited by the appellant's counsel is, in our opinion, not applicable to the facts of the case on hand.

16. It is, however, conceded at the bar that in view of the decision in 1990 (2) M.L.J.405 referred to supra, the claim made by the appellant for compensation amounts to equitable set off in view of the fact that the same was made on a different cause of action apart from the one that gave rise to the filing of the suit and that therefore, the appellant has to be directed to pay court fee in respect of the same. However, the observation in the decision cited above that the defendant has not paid any court fee and therefore the plea of set off has to be rejected was made under a different set of facts and circumstances and therefore, the same is distinguished as above.

17. On a calculation of damages for unauthorised enjoyment of the coconut trees by the appellant for 3 faslis from 1392 to 1994, it is seen that the respondent is entitled to Rs.94,425/- at the rate of Rs.7 5/- per tree for

250 coconut trees for fasli 1392, 350 coconut trees for fasli 1393 and 571 coconut trees for fasli 1394 and also Rs.6,600 /- at Rs.2,200/- per fasli for enjoyment of the bamboo clusters and mango trees for 3 faslis as fixed by the trial Court. Similarly, the appellant is entitled to a compensation of Rs.28,550/- at the rate of Rs.50/- per tree for 571 coconut trees from the respondent and therefore, after deducting Rs.28,550/- from Rs.94,425/-, the respondent will be entitled to Rs.65,875/- by way of damages. It is in these circumstances that the decree passed by the trial Court is modified as follows. The respondent/plaintiff is entitled to a decree for Rs.65,87 5/- against the appellant/defendant with subsequent interest at 6% per annum from the date of plaint till the date of realisation with proportionate costs and the appellant/defendant is entitled to Rs.28,550 /- by way of equitable set off, on payment of court fee on Rs.14,275/- in the trial Court on or before 30th June, 2003 failing which he will not be entitled to the relief of equitable set off and the respondent/plaintiff will be entitled to a decree for Rs.94,425/- with subsequent interest and proportionate costs as stated above.

18. In view of the above findings, the appeal preferred by the appellant/defendant stands dismissed with costs. The Cross Objection filed by the respondent/plaintiff is allowed with proportionate costs.

Index: Yes
Website: Yes
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To

1. The Subordinate Judge, Kumbakonam.
2. The Section Officer, V.R.Section, High Court, Madras.

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